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HOUSE BILL 759

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Ben Lujan

AN ACT

RELATING TO PAYMENT OF WAGES; INCREASING THE STATE MINIMUM
WAGE; PROVIDING FOR AN ANNUAL COST OF LIVING INCREASE;
ELIMINATING EXEMPTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 50-4-21 NMSA 1978 (being Laws 1955,
Chapter 200, Section 2, as amended) is amended to read:

"50-4-21. DEFINITIONS.--As used in the Minimum Wage Act:

A. "employ" includes suffer or permit to work;

B. "employer" includes any individual, partnership,
association, corporation, business trust, legal representative
or any organized group of persons employing one or more
employees at any one time, acting directly or indirectly in the
interest of an employer in relation to any employee, but shall
not include the United States [~~the state or any political~~

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1 ~~subdivision thereof]; and~~

2 C. "employee" includes any individual employed by
3 any employer [~~but shall not include:~~

4 ~~(1) any individual employed in domestic~~
5 ~~service in or about a private home;~~

6 ~~(2) any individual employed in a bona fide~~
7 ~~executive, administrative or professional capacity and foremen,~~
8 ~~superintendents and supervisors;~~

9 ~~(3) any individual employed by the United~~
10 ~~States or by the state or any political subdivision thereof;~~

11 ~~(4) any individual engaged in the activities~~
12 ~~of an educational, charitable, religious or nonprofit~~
13 ~~organization where the employer-employee relationship does not,~~
14 ~~in fact, exist or where the services rendered to such~~
15 ~~organizations are on a voluntary basis. The employer-employee~~
16 ~~relationship shall not be deemed to exist with respect to any~~
17 ~~individual being served for purposes of rehabilitation by a~~
18 ~~charitable or nonprofit organization, notwithstanding the~~
19 ~~payment to the individual of a stipend based upon the value of~~
20 ~~the work performed by the individual;~~

21 ~~(5) salesmen or employees compensated upon~~
22 ~~piecework, flat rate schedules or commission basis;~~

23 ~~(6) students regularly enrolled in primary or~~
24 ~~secondary schools working after school hours or on vacation;~~

25 ~~(7) registered apprentices and learners~~

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1 ~~otherwise provided by law;~~

2 ~~(8) persons eighteen years of age or under who~~
3 ~~are not students in a primary, secondary, vocational or~~
4 ~~training school;~~

5 ~~(9) persons eighteen years of age or under who~~
6 ~~are not graduates of a secondary school;~~

7 ~~(10) persons employed by ambulance services;~~

8 ~~(11) G.I. bill trainees while under training;~~

9 ~~(12) seasonal employees of any employer~~
10 ~~obtaining and holding a valid certificate issued annually by~~
11 ~~the state labor commissioner. The certificate shall state the~~
12 ~~job designations and total number of employees to be exempted.~~
13 ~~In approving or disapproving an application for a certificate~~
14 ~~of exemption, the commissioner shall consider the following:~~

15 ~~(a) whether such employment shall be at~~
16 ~~an educational, charitable or religious youth camp or retreat;~~

17 ~~(b) that such employment will be of a~~
18 ~~temporary nature;~~

19 ~~(c) that the individual will be~~
20 ~~furnished his room and board in connection with such~~
21 ~~employment, or if the camp or retreat is a day camp or retreat,~~
22 ~~the individual will be furnished board in connection with such~~
23 ~~employment;~~

24 ~~(d) the purposes for which the camp or~~
25 ~~retreat is operated;~~

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1 ~~(e) the job classifications for the~~
2 ~~positions to be exempted; and~~

3 ~~(f) any other factors that the~~
4 ~~commissioner deems necessary to consider;~~

5 ~~(13) any employee employed in agriculture:~~

6 ~~(a) if such employee is employed by an~~
7 ~~employer who did not, during any calendar quarter during the~~
8 ~~preceding calendar year, use more than five hundred man-days of~~
9 ~~agricultural labor;~~

10 ~~(b) if such employee is the parent,~~
11 ~~spouse, child or other member of his employer's immediate~~
12 ~~family; for the purpose of this subsection, employer shall~~
13 ~~include the principal stockholder of a family corporation;~~

14 ~~(c) if such employee: 1) is employed as~~
15 ~~a hand-harvest laborer and is paid on a piece-rate basis in an~~
16 ~~operation which has been, and is customarily and generally~~
17 ~~recognized as having been, paid on a piece-rate basis in the~~
18 ~~region of employment; 2) commutes daily from his permanent~~
19 ~~residence to the farm on which he is so employed; and 3) has~~
20 ~~been employed in agriculture less than thirteen weeks during~~
21 ~~the preceding calendar year;~~

22 ~~(d) if such employee, other than an~~
23 ~~employee described in Subparagraph (c) of this paragraph: 1)~~
24 ~~is sixteen years of age or under and is employed as a hand-~~
25 ~~harvest laborer, is paid on a piece-rate basis in an operation~~

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1 ~~which has been, and is generally recognized as having been,~~
2 ~~paid on a piece-rate basis in the region of employment; 2) is~~
3 ~~employed on the same farm as his parent or person standing in~~
4 ~~the place of his parent; and 3) is paid at the same piece-rate~~
5 ~~as employees over age sixteen are paid on the same farm; or~~
6 ~~(e) if such employee is principally~~
7 ~~engaged in the range production of livestock; or~~
8 ~~(14) employees of charitable, religious or~~
9 ~~nonprofit organizations who reside on the premises of group~~
10 ~~homes operated by such charitable, religious or nonprofit~~
11 ~~organizations for mentally retarded or emotionally or~~
12 ~~developmentally disabled persons]."~~

13 Section 2. Section 50-4-22 NMSA 1978 (being Laws 1955,
14 Chapter 200, Section 3, as amended by Laws 2005, Chapter 302,
15 Section 1 and by Laws 2005, Chapter 306, Section 1) is amended
16 to read:

17 "50-4-22. MINIMUM WAGES.--

18 A. An employer [~~except as provided in Section~~
19 ~~50-4-21 NMSA 1978]~~ shall pay an employee the minimum wage rate
20 of [~~five dollars fifteen cents (\$5.15) an hour, except that]~~
21 six dollars fifty cents (\$6.50) an hour. As of January 1,
22 2008, an employer shall pay an employee the minimum wage rate
23 of seven dollars fifty cents (\$7.50) an hour. As of January 1,
24 2009 and on January 1 of each successive year, the minimum wage
25 rate shall be increased as provided in Subsection E of this

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1 section.

2 B. An employer furnishing food, utilities, supplies
3 or housing to an employee who is engaged in agriculture may
4 deduct the reasonable value of such furnished items from any
5 wages due to the employee.

6 [~~B.~~] C. An employee [~~subject to Subsection A of~~
7 ~~this section~~] who customarily and regularly receives more than
8 thirty dollars (\$30.00) a month in tips shall be paid a minimum
9 hourly wage of two dollars thirteen cents (\$2.13). The
10 employer may consider tips as part of wages, but the tips
11 combined with the employer's cash wage shall not equal less
12 than [~~five dollars sixty cents (\$5.60) per hour~~] the minimum
13 wage rate as provided in Subsection A of this section. All
14 tips received by such employees shall be retained by the
15 employee, except that nothing in this section shall prohibit
16 the pooling of tips among employees.

17 [~~G.~~] D. An employee [~~subject to the provisions of~~
18 ~~Subsection A of this section~~] shall not be required to work
19 more than forty hours in any week of seven days, unless the
20 employee is paid one and one-half times the employee's regular
21 hourly rate of pay for all hours worked in excess of forty
22 hours. For an employee who is paid a fixed salary for
23 fluctuating hours and who is employed by an employer a majority
24 of whose business in New Mexico consists of providing
25 investigative services to the federal government, the hourly

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1 rate may be calculated in accordance with the provisions of the
2 federal Fair Labor Standards Act of 1938 and the regulations
3 pursuant to that act; provided that in no case shall the hourly
4 rate be less than the federal minimum wage.

5 E. On January 1, 2009 and on January 1 of each
6 successive year, the minimum wage rate shall be increased by
7 the increase in the cost of living. The increase in the cost
8 of living shall be measured by the percentage increase as of
9 August of the immediately preceding year over the level as of
10 August of the previous year of the consumer price index for all
11 urban consumers, United States city average for all items, or
12 its successor index as published by the United States
13 department of labor or its successor agency, with the amount of
14 the minimum wage increase rounded to the nearest multiple of
15 five cents (\$.05). The labor and industrial division of the
16 labor department shall publish by November 1 of each year the
17 adjusted minimum wage rates that shall take effect the
18 following January 1."

19 Section 3. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is July 1, 2007.

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